

EXHIBIT 6

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MICHAEL VALENTINE and JASON CLARK

11 BEFORE JAMS

12 FORTINET, INC., a corporation,
13 Claimant,

14 v.

15 MICHAEL VALENTINE, an individual;
16 JASON CLARK, an individual,
17 Respondents.

REFERENCE NO. 1110016737

**RESPONDENTS' INITIAL
PREHEARING BRIEF**

1 forth above, the evidence is that Mr. Valentine's and Mr. Clark's former coworkers affirmatively
 2 reached out to them about opportunities at Sophos. Once their former colleagues initiated
 3 contact, Mr. Valentine and Mr. Clark were permitted under California law to communicate with
 4 the employees, receive and consider their applications, and ultimately hire them. *Loral*, 174 Cal.
 5 App. 3d at 279-80. To the extent Fortinet contends otherwise, it is seeking to enforce the non-
 6 solicitation provisions as though they are unlawful and unenforceable "no-hire" agreements.
 7 *Thomas Weisel*, 2010 WL 546497, at *4.

8 **D. Fortinet's "Trade Secret" Allegations Are a Red Herring.**

9 Fortinet has accused Mr. Valentine and Mr. Clark of breaching their employment
 10 agreements with Fortinet by "using Fortinet Trade Secrets." Arb. Demand (Valentine) ¶ 58; Arb.
 11 Demand (Clark) ¶ 50. But these allegations are nothing more than a distraction. First, Fortinet
 12 cannot even identify with reasonable particularity what its so-called "trade secrets" are. Second,
 13 Fortinet has no evidence—none—that either Mr. Valentine or Mr. Clark used any non-public
 14 Fortinet information in doing their jobs at Sophos, or for any other reason. And finally, both
 15 gentlemen will testify that their jobs and Sophos's competitive positioning are so different that
 16 any Fortinet information would be—and is—virtually useless in their current positions at Sophos.

17 **V. FORTINET SUFFERED NO DAMAGES FROM MR. VALENTINE AND MR.
 18 CLARK'S ACTIONS.**

19 At the end of the day, Fortinet has suffered no damages from the actions of Mr. Valentine
 20 and Mr. Clark. The only legitimate measure of damages is the cost to replace the employees who
 21 were supposedly wrongfully solicited, or perhaps some showing of lost sales or revenue from the
 22 departures (the latter category being much more attenuated). But as Sophos is learning through
 23 discovery, Fortinet filled the vacancies left by the departing employees by dividing up their
 24 responsibilities among existing Fortinet employees or promoting existing Fortinet employees. So
 25 the "damages" from the departures is minimal or nonexistent. And by all public accounts,
 26 Fortinet's sales and revenues continue to rise, so Fortinet cannot claim it was "damaged" because
 27 10 of its more than 2,500 employees left the company to join Sophos.

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1 **VI. CONCLUSION**

2 Mr. Valentine and Mr. Clark look forward to addressing these issues at the upcoming
3 arbitration. The claims against them are false and unfounded, and both gentlemen look forward
4 to being vindicated for doing what California law permits them to do—change jobs and enhance
5 their careers in the process.

6
7 Dated: October 17, 2014

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9 By /s/ Kathryn Riley Grasso

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